

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application. In view of the above Amendment, Applicant believes the pending application is in condition for allowance.

Claims 1, 5-8, 10-12, 16-19, 21 and 22 are now present in this application. Claims 1, 7, 12 and 18 are independent. Claim 23 has been cancelled. No new matter has been added. Reconsideration of this application, as amended, is respectfully requested.

Claim Objection

The Examiner has objected to claim 23 because of informalities. Applicant has cancelled claim 23 and thus this objection is moot.

Rejections under 35 U.S.C. §103

Claims 1, 5-8, 10-12, 16-19 and 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Replay Gain (RG, hereinafter) in view of Takahiro. This rejection is respectfully traversed.

Independent claim 1 recites, among other features, adjusting an audio level of a subsequent song unit on the basis of the offset value, and encoding and recording the subsequent song unit having the adjusted audio level. Independent claims 7, 12 and 18 include similar features in a varying scope.

The Office Action relies on the Calculation page, “4. Calibration with reference level” in RG to allege that RG teaches these features of the independent claims (see page 3 of the Office Action). In particular, the Office Action states that RG teaches determining the audio level average (RMS), wherein it excludes audio levels outside a prescribed range by virtue of choosing the RMS value 5% down from the top of the sorted list (see page 4 of the Office Action).

According to RG, the solution to controlling the volume for each different CD is to store the ideal Replay Gain for each audio track in the header of the audio file (see Technical Outline page of RG). Therefore, the Reply Gain for each audio track is used to adjust the level of each

audio file to 83dB. Further, in RG, the player can adjust the output level of the audio file, and also can play the audio file while ignoring the Replay Gain in the header. However, in RG, the original mastered volume level of each audio file is not changed, and thus the audio file is not encoded and recorded with adjusted volume. Rather, additional data called Replay Gain stored in the header of each audio file is used to adjust the level of the audio. However, in the claimed invention, the subsequent song unit having the adjusted audio level is encoded and recorded. Because the audio data in the present application is recorded with the adjusted level, the present application does not require having a data such as Replay Gain in the header of each audio file. Hence, it is respectfully submitted that RG fails to teach or suggest adjusting an audio level of a subsequent song unit on the basis of the offset value, and encoding and recording the subsequent song unit having the adjusted audio level, as recited in amended independent claims 1, 7, 12 and 18. Further, Takahiro fails to overcome the deficiencies of RG.

Accordingly, the cited references fail to teach or suggest the features of amended independent claims 1, 7, 12 and 18, and thus amended independent claims 1, 7, 12 and 18, and each of the claims depending therefrom, are allowable.

Conclusion

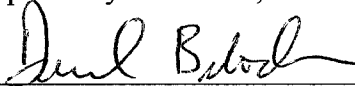
In view of the above Amendment, Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mr. Jun S. Ha, Reg. No. 58,508 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: April 23, 2009

Respectfully submitted,

By 

David A. Bilodeau

JSH

Registration No.: 42,325

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant